



FRONT RANGE EQUINE RESCUE

187 IBLA 269

Decided March 31, 2016



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FRONT RANGE EQUINE RESCUE

IBLA 2015-235

Decided March 31, 2016

Appeal from a Decision Record of the Field Manager, White River Field Office, Northwest District, Bureau of Land Management, approving a proposed gather and removal of wild horses from the West Douglas Herd Area and adjacent lands. DOI-BLM-CO-N05-2015-0023-EA.

Motion to dismiss granted; appeal dismissed.

1. Administrative Procedure: Standing--Wild Free-Roaming Horses and Burros Act

The Board will grant BLM's motion to dismiss an appeal from a BLM decision to conduct a gather and removal of wild horses from the public lands where an organization asserts standing to appeal on the basis that the decision has caused a drain on the organization's resources, but does not demonstrate that the decision directly impairs the ongoing activities and mission of the organization.

APPEARANCES: Bruce A. Wagman, Esq., San Francisco, California, for appellant; Arthur R. Kleven, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE ROBERTS

Front Range Equine Rescue (FRER) has appealed from a July 28, 2015, Decision Record (DR) of the Field Manager, White River (Colorado) Field Office (WRFO), Northwest District, Bureau of Land Management (BLM), approving the proposed gather and removal of all wild horses from within the 128,141-acre West Douglas Herd Area (WDHA) and adjacent lands, over the course of several years. The DR was based on a July 28, 2015, Environmental Assessment (EA)

(DOI-BLM-CO-N05-2015-0023-EA) and Finding of No New Significant Impact (FONNSI), which were prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4375 (2012).

BLM filed two separate motions to dismiss FRER's appeal. One motion seeks dismissal in part for lack of jurisdiction on the basis that "[t]he WRFO's decision to remove excess wild horses from the WDHA implements decisions in BLM land use plans." Partial Motion to Dismiss at 7. BLM recognizes that FRER's challenge to the DR is based on claims of errors arising under the Wild Free-Roaming Horses and Burros Act (WFRHBA), 16 U.S.C. §§ 1331-1340 (2012), and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1785 (2012), but argues that FRER in effect "challenges previous land use planning decisions" *Id.* at 8. The other motion seeks dismissal of the appeal in its entirety because FRER "has not met its burden of demonstrating that it is adversely affected by the BLM decision . . . and therefore has no standing." Motion to Dismiss at 5. Since we conclude that FRER lacks standing to appeal, we grant BLM's second motion and dismiss the appeal pursuant to 43 C.F.R. § 4.410(a).

BACKGROUND

Since enactment of the WFRHBA on December 15, 1971, BLM has been responsible, as the delegate of the Secretary of the Interior, for protecting and managing wild horses on the public lands of the Federal range. *See, e.g., Fund for Animals, Inc. v. U.S. BLM*, 460 F.3d 13, 15 (D.C. Cir. 2006). The WFRHBA requires BLM to manage wild horses "in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands." 16 U.S.C. § 1333(a) (2012). BLM is afforded a high degree of discretion in exercising the authority conferred by this statutory mandate. *Fund for Animals, Inc. v. U.S. BLM*, 460 F.3d at 15-16; *American Horse Protection Association, Inc. v. Frizzell*, 403 F. Supp. 1206, 1217 (D. Nev. 1975); *Redwings Horse Sanctuary*, 148 IBLA 61, 63 (1999); *American Horse Protection [Association], Inc.*, 134 IBLA 24, 26 (1995). The ultimate goal is for wild horses to be "managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat." 43 C.F.R. § 4700.0-6(a).

In performing its statutory obligations, BLM is required by section 3(b)(1) of the WFRHBA to maintain a "current inventory" of wild horses "on given areas of the public lands." 16 U.S.C. § 1333(b)(1) (2012). Based on the inventory, BLM is

required to determine, *inter alia*, the appropriate management level (AML)¹ for an area, whether and where overpopulations of wild horses exist, and “whether action should be taken to remove excess animals” or to control the population by other means. *Id.* Where a wild horse population exceeds the AML, constituting an overpopulation for a given area of the public lands, removal of excess animals is generally required by section 3(b)(2) of the WFRHBA:

Where the Secretary determines . . . on the basis of all information currently available to him[] that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, he *shall immediately remove excess animals from the range so as to achieve appropriate management levels.* Such action shall be taken . . . until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation[.]

16 U.S.C. § 1333(b)(2) (2012) (emphasis added); *see also* 43 C.F.R. § 4720.1; *American Horse Protection Association, Inc. v. Watt*, 694 F.2d 1310, 1316, 1317-18, 1319 n.4 (D.C. Cir. 1982); *Thomas M. Berry*, 162 IBLA 221, 224 (2004); *Animal Protection Institute of America*, 118 IBLA 20, 22-23, 27, 29 (1991) (citing *Dahl v. Clark*, 600 F. Supp. 585, 594 (D. Nev. 1984)).

BLM’s management of wild horses on public lands in Rio Blanco County, Colorado, is governed by the July 1997 White River Resource Area (WRRA) Resource Management Plan (RMP) and the October 2007 WDHA RMP Amendment.² *See* EA at 2, 4-5; Answer at 3-5. These public lands were initially designated in 1974 as part of two contiguous Herd Units (Douglas Creek and Piceance Basin). In the 1997 RMP, BLM re-designated the lands in the Herd Units as one Herd Management Area (HMA) (Piceance-East Douglas) and two contiguous Herd Areas (WDHA and North Piceance Herd Area). The HMA, which is designated for the management of wild horses, was deemed to have water, forage, and other components of habitat suitable for a self-sustaining herd.

¹ An AML represents the “optimum number” of wild horses that can inhabit a particular area of the public lands and that “results in a thriving natural ecological balance” and “avoids a deterioration of the range [associated with an overpopulation of wild horses].” *Animal Protection Institute of America*, 109 IBLA 112, 119 (1989).

² *See generally* http://www.blm.gov/co/st/en/fo/wrfo/wrfo_wild_horses.html (last visited Mar. 10, 2016).

BLM determined that the AML for the HMA was from 135 to 235 wild horses. *See* Record of Decision (ROD) and Approved RMP, dated July 1, 1997, at 2-26, Map 2-10;³ Answer at 4-5 (noting that BLM increased the AML in 2002 from 95-140 to 135-235, in conjunction with expanding the HMA boundary). For each of the Herd Areas, which are *not* designated for the management of wild horses, BLM determined that the AML was 0.⁴ *See* ROD and Approved RMP at 2-26 (0-50 wild horses for 0-10 years, but 0 wild horses after 10 years), Map 2-10; DR, dated Oct. 10, 2007, of State Director, Colorado, BLM, approving Field Manager's Proposed DR/FONSI, dated Aug. 29, 2005 (WDHA RMP Amendment), at unpaginated 2 ("[I]t is therefore my decision to approve the proposed decision . . . calling for the total removal of the wild horses in the [WDHA] at the earliest practicable date.")⁵

Based on a February 2012 inventory, BLM estimated that there were a total of approximately 291 wild horses in the WDHA, which clearly exceeded the AML of 0.⁶ *See* EA at 2; Partial Motion to Dismiss at 2. BLM further estimated that there were an additional 74 wild horses in areas adjacent to the WDHA, but not in the Piceance-East Douglas HMA. *See id.* Since, in accordance with the RMP, no wild horses were

³ The RMP can be found at http://www.blm.gov/style/medialib/blm/co/programs/land_use_planning/rmp/archives/white_river/rmp_rod.Par.61250.File.dat/Wrrr.pdf (last visited Mar. 10, 2016).

⁴ BLM notes that when it approved the 1997 WRRRA RMP, it rejected a proposal to designate part of the WDHA as an HMA for 60-70 wild horses. Also, when BLM approved the 2007 WDHA RMP Amendment, BLM rejected a proposal to designate part of the WDHA as an HMA for 29-60 wild horses. *See* Partial Motion to Dismiss at 4-5.

⁵ The Oct. 10, 2007, DR, and associated documents, approving the WDHA RMP Amendment, can be found at http://www.blm.gov/style/medialib/blm/co/programs/land_use_planning/rmp/archives/white_river.Par.48445.File.dat/2007%20West%20Herd%20Area%20Amendment_EA_Appendices_Affirmed%20Decision.pdf (last visited Mar. 10, 2016).

⁶ BLM also estimated that the Piceance-East Douglas HMA, which had an AML of from 135 to 235, had a current population of 377 wild horses. *See* Partial Motion to Dismiss at 2.

permitted to be located outside an HMA, whether or not in a Herd Area, BLM decided to gather and remove all of the wild horses from the WDHA and adjacent areas.⁷

In order to assess the potential environmental impacts of gathering and removing wild horses from the WDHA and adjacent areas and alternatives thereto, BLM prepared the EA.⁸ It considered the proposed action (Alternative A), under which BLM would employ all approved methods to gather and remove wild horses from the WDHA and adjacent lands; Alternative B, which would involve the exclusive use of bait and/or water trapping; Alternative C, which would use all approved methods, but in a phased approach based on age and sex; and Alternative D, the no action alternative, under which no gather/removal would take place. Under the action alternatives, once gathered and removed, the wild horses would most likely be transported to BLM's Canyon City, Colorado, holding facility, and prepared for adoption, sale, or long-term pasture.

In his DR, now on appeal, the Field Manager approved Alternative A, and thus the proposed gathering and removal of a total of 241 "excess" wild horses from within and adjacent to the WDHA (167) and outside the WDHA (74).⁹ DR at 2. The Field Manager's objective was to achieve and maintain a thriving natural ecological balance on the public lands and prevent a deterioration of the Federal range associated with

⁷ BLM explains that it proposed an initial gather/removal of 167 wild horses, rather than all of the wild horses, from the WDHA and adjacent areas "due to funding and short and long-term holding constraints." Partial Motion to Dismiss at 6. It also notes that future gather/removals "may require new NEPA compliance before implementation." *Id.*

⁸ Following formal public scoping that began on Dec. 16, 2014, BLM prepared a draft EA that was released for a 30-day public comment period on Apr. 6, 2015. It finalized the EA on July 28, 2015.

⁹ The Field Manager also issued a July 28, 2015, DR, approving the proposed gathering and removal of wild horses from the Piceance-East Douglas HMA and adjacent areas, which is not now at issue. See http://www.blm.gov/style/medialib/blm/co/field_offices/white_river_field/wild_horse_documents.Par.16443.File.dat/DR%20PEDHMA%20July%202015.pdf (last visited Mar. 10, 2016). That gather/removal would only take place "if it becomes difficult to gather excess wild horses from the [WDHA] due to weather, resource conditions, horse behavior, etc.," and would, together with the WDHA gather/removal, only gather/remove a total of 167 wild horses. DR (Piceance-East Douglas HMA) at 1.

an overpopulation of wild horses, as required by section 3(b)(2) of the WFRHBA. DR at 2; *see id.* at 3-4.¹⁰

The Field Manager placed his DR into full force and effect, pursuant to 43 C.F.R. § 4770.3(c), with the gather and removal scheduled to begin on or after September 14, 2015. *See* DR at 7.

FRER appealed timely from the Field Manager's DR.¹¹ FRER characterizes the multi-year gather/removal as a plan to "eliminate every horse from the WDHA in Colorado." Statement of Reasons (SOR) at 2. FRER argues that "BLM's plan to zero out the wild horse herd in the WDHA conflicts with the agency's mandate to *protect* wild horses and *manage* them as a *component* of public lands under the [WFRHBA]." *Id.*

Following the filing of FRER's appeal, two lawsuits were filed by other wild horse advocacy groups and individuals challenging the Field Manager's DR. *See Colorado Wild Horse and Burro Coalition, Inc. v. Jewell*, No. 1:15-cv-01454-CRC (D.D.C. filed Sept. 4, 2015); *Friends of Animals v. Jewell*, No. 1:15-cv-01500 (D.D.C. filed Sept. 15, 2015). On September 15, 2015, the court denied a motion in the first lawsuit seeking a temporary restraining order (TRO) or preliminary injunction (PI).

BLM reports that, in response to the lawsuits, it temporarily postponed the gather and removal, originally scheduled for September 14, until September 16, 2015, whereupon it proceeded with the gather of 167 wild horses from the WDHA, completing it on September 23, 2015. *See* Motion to Stay Proceedings at 3; Partial

¹⁰ In the FONNSI, the Field Manager determined, based on consideration of the context and intensity (or severity) of impact criteria of 40 C.F.R. § 1508.27, that BLM was not required, by section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (2012), to prepare an Environmental Impact Statement, since the gather and removal was not likely to significantly impact any aspect of the human environment. FONNSI at 2.

¹¹ FRER requests the Board, pursuant to 43 C.F.R. § 4.25, to grant it oral argument on BLM's motions to dismiss its appeal in part, for lack of jurisdiction, and in whole, for lack of standing to appeal. *See* Opposition to BLM [Partial] Motion to Dismiss for Lack of Jurisdiction (Opp. (Jurisdiction)) at 5; Opposition to BLM Motion to Dismiss for Lack of Standing (Opp. (Standing)) at 13. Since FRER has been afforded adequate opportunity to explain its views regarding jurisdiction and standing in writing, we deny the requests for oral argument. *See Wyoming Independent Producers Association*, 133 IBLA 65, 89 (1995).

Motion to Dismiss at 7. After the court rejected, on September 18, 2015, a second motion for a TRO/PI, seeking to bar the transportation of the gathered wild horses from onsite temporary holding corrals to an offsite short-term holding facility, BLM proceeded with the transfer, completing it on September 24, 2015. *See id.* FRER states that “less than 200 wild horses” remain in the WDHA. Opposition to BLM’s Motion to Stay Proceedings at 3. BLM states that “approximately 124 wild horses” remain in the WDHA, with 74 in adjacent non-HMA areas and 451 in and adjacent to the HMA. Partial Motion to Dismiss at 7. Only one of the lawsuits currently remains pending.¹²

By order dated October 28, 2015, we denied BLM’s motion to suspend the present proceeding pending a final resolution of the two lawsuits.

Thereafter, BLM filed its motions to dismiss FRER’s appeal. As noted, BLM sought partial dismissal for lack of jurisdiction to the extent FRER challenges, as violative of the WFRHBA and FLPMA, previous land use planning decisions, in the WRRR RMP and RMP Amendment, “not to designate the WDHA for long-term wild horse management [as an HMA], and establish an AML of zero.” Partial Motion to Dismiss at 7, 8. BLM also sought dismissal for lack of standing on the basis that FRER is not “adversely affected” by BLM’s July 2015 DR. Motion to Dismiss at 5.

Since we agree that FRER lacks standing to appeal, we need not address BLM’s other motion to dismiss.¹³ As explained below, since we are persuaded that FRER is not adversely affected by the Field Manager’s DR, we will grant BLM’s motion to dismiss and dismiss the appeal in its entirety.

¹² BLM reports that the lawsuit styled *Colorado Wild Horse and Burro Coalition, Inc. v. Jewell*, No. 1:15-cv-01454-CRC (D.D.C.), was voluntarily dismissed by the plaintiffs on Nov. 6, 2015. *See* Partial Motion to Dismiss at 7 n.4.

¹³ We note that the Department’s regulation provides for filing a protest of a land-use planning decision to the Director of BLM, who issues “the final decision of the Department of the Interior.” 43 C.F.R. § 1610.5-2; *see, e.g., Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 70 (2004); *Rainer Huck*, 168 IBLA 365, 396 (2006). The regulation does not provide for an appeal of a land-use planning decision to this Board. *See Southern Utah Wilderness Alliance*, 154 IBLA 275, 279 (2001); *Commission for the Preservation of Wild Horses*, 139 IBLA 24, 27 (1997). To the extent FRER challenges the 1997 WRRR RMP and 2007 RMP Amendment, designating the public lands at issue as not part of an HMA, and setting the AML at zero, its appeal is properly dismissed.

STANDING TO APPEAL

In order to appeal a BLM decision, an appellant is required to have standing under 43 C.F.R. § 4.410. An appellant must demonstrate that it is both a “party to a case” and “adversely affected” by the decision. 43 C.F.R. § 4.410(b) and (d); *see, e.g., Western Watersheds Project*, 185 IBLA 293, 298 (2015). If either element is lacking, the appeal must be dismissed. *See, e.g., WildEarth Guardians*, 183 IBLA 165, 170 (2013).

BLM assumes, “[f]or the sake of this argument,” that FRER qualifies as a party to the case under 43 C.F.R. § 4.410(b), since it “participated in the WRFO’s NEPA process by submitting scoping comments and comments on the preliminary EA.” Motion to Dismiss at 6; *see id.* at 2-3; SOR at 3-4; *e.g., WildEarth Guardians*, 183 IBLA at 171. We conclude that FRER is a party to the case under § 4.410(b). The question here is whether FRER is “adversely affected” by BLM’s DR.

In accordance with longstanding Board precedent, 43 C.F.R. § 4.410(d) provides that a party to a case is adversely affected by a decision when it “has caused or is substantially likely to cause injury” to “a legally cognizable interest” of the party. *See, e.g., Western Watersheds Project*, 185 IBLA at 298. The legally cognizable interest must be shown to have been held by the appellant at the time of the decision that it seeks to appeal. *See Western Watersheds Project v. BLM*, 182 IBLA 1, 8-9 (2012); *Center for Native Ecosystems*, 163 IBLA 86, 90 (2004).

The burden falls upon the appellant to make colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration, or other statement of an affected individual, that are sufficient to establish a causal relationship between the approved action and the injury alleged. *The Fund for Animals, Inc.*, 163 IBLA 172, 176 (2004); *Southern Utah Wilderness Alliance*, 127 IBLA 325, 327 (1993); *Colorado Open Space Council*, 109 IBLA 274, 280 (1989). The appellant need not prove that an adverse effect will, in fact, occur as a result of the BLM action, but we have long held that the threat of injury and its effect on the appellant must be more than hypothetical. *See Missouri Coalition for the Environment*, 124 IBLA 211, 216 (1992); *Donald K. Majors*, 123 IBLA 142, 145 (1992); *George Schultz*, 94 IBLA 173, 178 (1986). “Standing will only be recognized where the threat of injury is real and immediate.” *Legal & Safety Employer Research Inc.*, 154 IBLA 167, 172 (2001) (citing *Laser, Inc.*, 136 IBLA 271, 274 (1996); *Salmon River Concerned Citizens*, 114 IBLA 344, 350 (1990)). “[M]ere speculation that an injury might occur in the future will not suffice.” *Colorado Open Space Council*, 109 IBLA at 280. Thus, if the adverse effect is “contingent upon some future occurrence, . . . it is premature for th[e] Board to decide the matter.” *Nevada Outdoor Recreation Association*, 158 IBLA 207, 209-10 (2003).

DISCUSSION

FRER is a non-profit corporation dedicated to preventing the cruelty and abuse of wild horses “through rescue and education, and to protecting wild horses “from unlawful gathers and removals from public lands.” Notice of Appeal (NOA) at 3. FRER asserts that it is adversely affected by BLM’s DR “because the agency’s decision authorizes the unlawful removal of all wild horses from their protected public lands.” *Id.*; SOR at 5. FRER indicates that it has two basic missions concerning wild horses, *i.e.*, (1) to actively challenge the unnecessary gather and removal of wild horses from the public lands; and (2) to rescue, rehabilitate, and assist with the adoption of wild horses. See NOA at 2-3; SOR at 5.

FRER states in its NOA and SOR that it is not appealing on behalf of its members, and accordingly does not seek to establish representational standing on the basis of an alleged injury to a legally cognizable interest *of its members*.¹⁴ See NOA at 3; SOR at 5. Rather, FRER indicates that it is appealing on its own behalf, and thus seeks to establish organizational standing on the basis of an alleged injury to a legally cognizable interest *of the organization*. See NOA at 3-4; SOR at 4-5.

FRER asserts that it has a general organizational interest in BLM’s management of the wild horse herd on the Federal range, the viability of which is threatened by BLM’s current and future gathers and removals. FRER states that it “has fundamental interests . . . in seeing wild horses . . . remain free-roaming on public lands.” NOA at 3; SOR at 5. However, the Board has held “a mere general interest in a problem, absent colorable allegations of adverse effect, is insufficient to confer standing,” and an organization “may not rely on [a] general organizational interest alone in challenging a BLM action.” *Southern Utah Wilderness Alliance*, 127 IBLA at 329-30; *see also Center for Biological Diversity*, 181 IBLA 325, 338 (2012). FRER’s general interest cannot serve as a proper basis for standing to appeal, no matter how meritorious the arguments that are raised in support of the appeal. See, *e.g.*, *Newmont Mining Corp.*,

¹⁴ Evidence that its member(s) visit the WDHA and observe and otherwise enjoy the wild horses in their natural habitat arguably would be sufficient to establish that FRER has a legally cognizable interest in the wild horses, which interest is substantially likely to be injured by the gather/removal, and thus demonstrate the necessary standing to appeal. See, *e.g.*, *Western Watersheds Project*, 182 IBLA at 7; *Audubon Society of Portland*, 128 IBLA 370, 373-74, 374 n.2 (1994); *Animal Protection Institute of America*, 117 IBLA at 209-10. However, FRER offers no such evidence, and thus does not seek to establish representational standing. See *Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972).

151 IBLA 190, 195 (1999) (“[M]ere interest in a problem or deep concern with the issues will not suffice [for standing to appeal]”); *Powder River Basin Resource Council*, 124 IBLA 83, 89 (1992)); *Sharon Long*, 83 IBLA 304, 308-09 (1984); *Oregon Natural Resources Council*, 78 IBLA 124, 125-26 (1983) (citing *Sierra Club v. Morton*, 405 U.S. at 734).

FRER specifically asserts that it has an *organizational* interest in the wild horses that it seeks to protect, on “two separate grounds”: (1) its “economic interests” in the expenditure of organizational resources for the protection of the wild horses; and (2) its “direct concern with . . . BLM’s mismanagement of genetic diversity in the herds at issue[.]” Opp. (Standing) at 8. FRER concludes:

FRER’s stated injury is plain and impossible to deny. FRER’s mission to protect and sustain wild horses on [F]ederal public lands is frustrated by BLM’s plan to eliminate the WDHA herd. FRER has had to devote significant time and financial resources to attempt to counteract BLM’s decimation of the WDHA, since BLM intends to conduct gathers over the next several years to ensure that every last wild horse is removed from the range. BLM’s conduct of denying protection to wild horse herds “directly conflict[s] with [FRER’s] mission.” *Nat’l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1430 (D.C. Cir. 1996). For these reasons, *FRER has a significant organizational stake . . . in BLM’s maintenance of the challenged action.*

Id. at 11 (emphasis added).

In support, FRER offers the December 19, 2015, Declaration of Hilary Wood (Wood Decl.), President and Founder, FRER. Wood attests to FRER’s having expended significant time and resources in evaluating and commenting on BLM’s proposed gather and removal, with the goal of persuading BLM that the gather and removal of all wild horses from the WDHA threatens to undermine the welfare of the wild horses, including the genetic diversity and viability of the herd. See Wood Decl., ¶¶ 3, 4, 6, 7. She notes that FRER’s efforts have extended to proposals by other BLM offices in the western United States. See *id.*, ¶¶ 3, 4, 6, 7; Opp. (Standing) at 9-10. Wood states that, absent the proposal at issue and similar proposals, FRER would be free to expend its resources on its other advocacy, rescue, rehabilitation, adoption, and educational efforts on behalf of wild horses. See Wood Decl., ¶ 5. Finally, she concludes that FRER’s “legal injuries” will be remedied were BLM required to comply with the WFRHBA, NEPA, and other Federal statutes. *Id.*, ¶ 8.

FRER argues that it “has standing in its own right to maintain this appeal based on its commitment and expenditure of organizational resources and funds to research, investigate, and combat (1) BLM’s efforts to zero out wild horses across the United States; and (2) BLM’s failure to manage wild horse herds with long-term health in mind.” Opp. (Standing) at 9. FRER asserts that it “has expended significant time and resources, evaluating, investigating and compiling data with respect to BLM’s actions regarding these herds,” and that it “has then invested time and resources it would have dedicated to other work of the organization, in order to implore BLM to stop ignoring the genetic risks that its management practices have on wild horse herds.” *Id.* (citing Wood Decl., ¶¶ 2-4).

As discussed below, we reject FRER’s argument. FRER has not demonstrated “a nexus between the decision under appeal and the interests which the [organization] . . . seeks to protect” and which are injured, or are substantially likely to be injured, by the decision. *Colorado Open Space Council*, 109 IBLA at 279 (emphasis added). “There must, in short, be a causal relationship between the action undertaken [by BLM] and the injury alleged.” *Id.* at 280.

In two recent opinions, this Board dismissed appeals for lack of standing because the appellant organizations failed to demonstrate a nexus between the decision under appeal and the interests claimed by the organizations to be injured, or substantially likely to be injured, by the decision. The arguments offered by FRER in the present case were considered and rejected in those two opinions.

The first opinion, *Board of County Commissioners of Pitkin County, Colorado [Pitkin County]*, 186 IBLA 288 (2015), involved appeals from BLM decisions approving suspensions of operations (SOPs) of oil and gas leases in Colorado. The appellant organizations argued that BLM’s approval of the SOPs had “required them to divert resources away from their respective operations and programs, and that this ‘diversion of resources’ [was] an adverse impact for purposes of standing.” 186 IBLA at 305. The Board followed the rationale in *Colorado Open Space Council*, 109 IBLA at 280, in holding that none of the appellants had “shown any causal relationship between approval of the SOPs and any diversion of resources, and, therefore they [had] failed to show the essential nexus to establish standing.” *Id.* Among other contentions raised in *Pitkin County*, the Wilderness Workshop (Workshop) asserted that BLM’s approval of the SOPs required it to “expend considerable resources to undertake public outreach and education to inform its members and partners of the status of the Leases,” and that “this diversion of resources ‘frustrates’ its mission, a ‘core part of [which] involves research and public education about the ecological integrity of local landscapes and public land.”” *Id.* at 305-06 (quoting Workshop’s Response at 19). In rejecting the Workshop’s argument, we specifically held that it

had not “shown a nexus between their claimed expenditure of resources and BLM’s SOP decisions.” *Id.* at 306.

More recently, the Board decided *Front Range Equine Rescue*, 187 IBLA 28 (2016), in which FRER challenged the gather and removal of wild horses from the Kiger and Riddle Mountain HMAs. As in the present case, “FRER claim[ed] injury to its mission and resources through its stated need ‘to expend its limited resources to stop BLM’s Action that will significantly and directly affect wild horses.’” 187 IBLA at 36 (quoting Response at 11). In effect, FRER made the untenable argument that it had standing to appeal because it had expended organizational resources on filing its appeal.¹⁵ In rejecting FRER’s argument, we stated:

We fail to see how FRER’s expenditure of resources in challenging BLM’s gather and removal of wild horses and maintaining its appeal to the Board adversely affects FRER’s mission. Indeed, FRER defines its mission as taking the steps it deems necessary to protect wild horses, in this case those in the Kiger and Riddle Mountain HMAs. The activity that gives meaning to FRER’s mission cannot also be said to cause injury to that mission.

187 IBLA at 37.

FRER again argues that “[t]here is extensive case law holding that an organization establishes its own standing to sue—without reference to affidavits of its members and their viewing or visiting of the resource (land or nature or animal) in question—when the organization itself has suffered or will suffer injury from the challenged conduct.” Opp. (Standing) at 6. For this proposition, and just as it did in *Front Range Equine Rescue*, 187 IBLA at 37, FRER relies on the U.S. Supreme Court’s opinion in *Havens Realty Corp. v. Coleman [Havens]*, 455 U.S. 363 (1982). In *Havens*, a housing services organization (HOME), was found to devote significant resources to identifying and counteracting the defendant’s discriminatory practices. The Court held that there was an injury in fact to the organization sufficient to confer standing. The Court stated that “[i]f, as broadly alleged, [the owner’s] [racial] steering practices have perceptibly impaired HOME’s ability to provide counseling and referral services for low and moderate income home-seekers, there can be no question that the organization has

¹⁵ In *Pitkin County*, we explained that an “organization’s expenditure of resources on a lawsuit, including litigation expenses, does not constitute an injury sufficient to constitute standing.” 186 IBLA at 308 (citing *Equal Rights Center v. Post Properties, Inc.*, 633 F.3d 1136, 1138-40 (D.C. Cir. 2011)).

suffered injury in fact.” 455 U.S. at 379. The Court concluded: “Such concrete and demonstrable *injury to the organization’s activities*—with the consequent drain on the organization’s resources—constitutes far more than simply a setback to the organization’s abstract social interests,” and thus afforded it standing to sue. *Id.* (emphasis added); see also, e.g., *Valle del Sol, Inc. v. Whiting [Valle del Sol]*, 732 F.3d 1006, 1018 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 1876 (2014) (“[Organization has] direct standing to sue [when] it show[s] a drain on its resources from both a diversion of its resources and frustration of its mission.” (quoting *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1219 (9th Cir. 2012))).¹⁶

FRER repeats its argument that the DR at issue “drains FRER’s limited resources and frustrates FRER’s mission to save truly wild horses.” Opp. (Standing) at 12. Our reasoning in *Front Range Equine Rescue*, set forth below, applies to the present case:

In applying these principles to FRER’s challenge to the DR at issue, we find no evidence that the gather/removal of wild horses from the public lands in the HMAs has directly impaired, or is substantially likely to impair, FRER’s ongoing activities. 455 U.S. at 379. FRER’s mission is to “protect and sustain wild horses on federal public lands.” Wood Decl., ¶ 6. FRER is also engaged in the rescue, rehabilitation, and adoption of wild horses and the education of the public regarding roundups and responsible ownership of wild horses. *Id.*, ¶ 2. As part of its ongoing activities, FRER has, in the past, “expended significant time and resources to monitor and comment on unjustified or harmful roundups conducted by [BLM],” and, on occasion, challenged such actions, and undoubtedly will, regardless of the current decision, continue to devote significant time and resources to those ends. *Id.*,

¹⁶ The appellants in *Pitkin County* also argued that *Havens* and similar cases provided clear support for their argument that they had been harmed by a drain on resources. We stated that the appellants therein had “miss[ed] the crucial holding of those cases, *i.e.*, there must be a ‘concrete and demonstrable injury to the organization’s activities –with the consequent drain on the organization’s resources.’” 186 IBLA at 310 (quoting *Havens*, 455 U.S. at 379). We further held that the appellants had “not shown that the SOP decisions have caused the alleged diversion of resources or effects an ‘inhibition of their daily operations, an injury both concrete and specific to the work in which they are engaged.’” *Id.* (quoting *People for the Ethical Treatment of Animals, Inc. v. U.S. Dep’t of Agriculture [PETA v. USDA]*, 7 F. Supp. 3d 1, 8 (D.D.C. 2013)). We concluded that none of the appellants in *Pitkin County* had established the “requisite causal connection between the SOPs and the harm alleged.” *Id.*

¶ 3. FRER fails to show, however, how its efforts are impeded or thwarted in any way by the gather/removal of the wild horses in the subject HMAs. Nor does FRER allege that it has altered its efforts or otherwise shifted course since BLM issued the decision. So far as we can discern, FRER's basic activities remain unchanged, and the action FRER is complaining about here is the very type of action FRER claims it has been organized to prevent.

Moreover, beyond the immediate consequence of the present appeal, FRER does not allege that BLM's DR actually affects its work on behalf of wild horses, since there is no evidence that the decision has led, or is even likely to lead, to similar actions. See Wood Decl., ¶ 6 ("The interests of FRER have been and will continue to be adversely affected *if* BLM is permitted to continue its practice of selectively breeding Kiger horses" (emphasis added)). FRER, at best, states that it is being "forced" to devote its limited resources in challenging the gather/removal now at issue to the detriment of its other efforts to rescue, rehabilitate, and adopt wild horses and to educate the public regarding roundups and responsible ownership of wild horses. Wood Decl., ¶ 5. However, the drain on resources envisioned as a basis for organizational standing in *Havens* stems not from the bringing of the lawsuit against the challenged action, but from the other activities that the organization must undertake as a result of the challenged action. See 455 U.S. at 379 ("[Standing arises in the case of] concrete and demonstrable injury to the organization's [counseling and referral] activities—with the *consequent* drain on the organization's resources" (emphasis added)). FRER fails to demonstrate that, other than the bringing of the appeal, BLM's decision has caused it to suffer a drain of resources.

187 IBLA at 38-39.

It is important to note that the critical finding in *Havens* and like cases is that the challenged action is, in some identifiable way, directly affecting or likely to directly affect the ongoing activities of the organization. As the Supreme Court stated in *Sierra Club v. Morton*, 405 U.S. at 739, "a mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' within the meaning of the APA [Administrative Procedure Act, 5 U.S.C. § 702 (2012)]." See *The Center for Law and Education v. Department of Education*, 396 F.3d 1152, 1161-62 (D.C. Cir. 2005) (citing *National Treasury Employees Union [NTEU] v. United States*, 101 F.3d at 1429 ("[C]onflict

between a defendant's conduct and an organization's mission is alone insufficient to establish Article III standing. Frustration of an organization's objectives 'is the type of abstract concern that does not impart standing.'" (quoting *National Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1433 (D.C. Cir. 1995)))); *Valle del Sol*, 732 F.3d at 1018; see also, e.g., *Abigail Alliance for Better Access to Developmental Drugs v. Von Eschenbach [Abigail Alliance]*, 469 F.3d 129, 132-33 (D.C. Cir. 2006); *The Humane Society of the United States v. U.S. Postal Service*, 609 F. Supp. 2d 85, 89, 90-92 (D.D.C. 2009).

BLM's decision to gather and remove wild horses from the public lands in the WDHA does not directly affect, nor is it likely to directly affect, FRER's ongoing "activities." *Sierra Club v. Morton*, 455 U.S. at 379. FRER refers to its ongoing efforts to rescue, rehabilitate, and adopt wild horses and to educate the public regarding roundups and responsible ownership of wild horses. See, e.g., Wood Decl., ¶¶ 2, 5. However, FRER fails to demonstrate how such efforts are impaired, impeded, or thwarted by the gather and removal of the wild horses now at issue. FRER does not allege that it has altered its ongoing efforts or otherwise shifted course since BLM issued the decision. So far as we can discern, FRER's basic activities remain unchanged. We acknowledge Wood's assertion that FRER has, in the past, "expended significant time and resources to monitor and comment on unjustified or harmful roundups conducted by the [BLM]," and, on occasion, challenged such actions. *Id.*, ¶ 3. Regardless of the current decision, FRER will continue to devote significant time and resources to those ends.

Beyond the immediate consequence of the present appeal, FRER does not allege that the challenged DR actually affects its work on behalf of wild horses, since there is no evidence that the decision, which provides for the gather and removal of all wild horses from the WDHA, has led, or is even likely to lead, to similar actions. See Wood Decl., ¶ 6 ("The interests of FRER have been and will continue to be adversely affected *if* BLM is permitted to continue its practice of zeroing out entire herds of wild horses." (Emphasis added)). BLM's authority to manage the wild horse population in the WDHA and adjacent land is not necessarily contrary to FRER's mission "to protect wild horses on [F]ederal public lands[.] *Id.*, ¶ 3.

FRER argues that, by having to devote its resources to challenging the gather and removal now at issue, it has been "forced to expend its limited resources investigating and tracking BLM's unlawful actions," and that "[t]he resources that have been used for these projects would otherwise have been used for FRER's other campaigns and organizational goals, including its efforts to keep wild horses free from roundups." *Id.*, ¶ 5. However, the drain on resources envisioned as a basis for organizational standing in *Havens* stems not from the bringing of the lawsuit against the challenged action, but from the *other activities* that the organization must

undertake as a result of the challenged action. See 455 U.S. at 379 (“[Standing arises in the case of] concrete and demonstrable injury to the organization’s [counseling and referral] activities—with the *consequent* drain on the organization’s resources.” (Emphasis added)). FRER fails to demonstrate that activities other than the bringing of the appeal have caused it to suffer a drain of resources as a consequence of the challenged gather and removal of wild horses from the WDHA.

Here, we are not persuaded that the DR has any effect beyond the immediate effects of gathering and removing wild horses from the WDHA. Whether BLM chooses to gather and remove wild horses from the WDHA or other Herd Areas in future years remains to be determined. Certainly, the fact that BLM has chosen to gather and remove wild horses in the WDHA does not mean that it will choose to do so again in the future. Moreover, BLM may choose methods other than gather and removal to control the wild horse population. FRER has simply failed to demonstrate that the decision at issue is likely to have any lingering, more far-reaching effects on it as an organization. FRER fails to show, or even allege, that BLM’s decision “inhibit[s] . . . [its] daily operations,” and thereby constitutes an injury “both concrete and specific to the work in which [it is] . . . engaged.” *Pitkin County*, 186 IBLA at 310 (quoting *PETA*, 7 F. Supp. 3d at 8).

In the present case, FRER fails to demonstrate that the gather and removal of wild horses from the WDHA affected the organization itself other than by causing it to incur litigation costs, and otherwise to choose to challenge the action approved by BLM in the DR. See SOR at 5 (“FRER has expended its resources to challenge and oppose BLM’s plans to destroy the WDHA herd”); Motion to Dismiss at 12 (“Appellant has not demonstrated that its expenditures ‘to investigate, track, challenge, and oppose’ the BLM’s decisions (NOA at 3; SOR at 5), are beyond the costs normally expended on its organizational advocacy mission.”). FRER fails to show that there is “some other injury,” apart from the costs of challenging the gather and removal at issue, that it would suffer had it not brought the appeal.

FRER does not allege that the subject DR has subjected or is substantially likely to subject it “to operational costs beyond those normally expended to review, challenge, and educate the public about [wild horse gathers/removals].” *National Taxpayers Union, Inc. v. United States*, 68 F.3d at 1434. FRER “cannot convert its ordinary program costs into an injury in fact.” *Id.*; see *National Association of Home Builders v. Environmental Protection Agency (NAHB v. EPA)*, 667 F.3d 6, 12 (D.C. Cir. 2011). As the court stated in *Valle del Sol*, “[a]n organization ‘cannot manufacture the injury by incurring litigation costs or simply choosing to spend money fixing a problem that otherwise would not affect the organization at all. It must instead show that it would have suffered *some other injury* if it had not diverted resources to

counteracting the problem.” 732 F.3d at 1018 (emphasis added).¹⁷ FRER has not demonstrated that there exists a causal relationship between the action approved in the DR and an injury to a *legally cognizable interest*. See, e.g., *The Fund for Animals, Inc.*, 163 IBLA at 176. At bottom, FRER fails to show that it will be impaired or thwarted in its general efforts to promote the welfare of wild horses by the decision at issue.

Finally, while FRER implies that the decision at issue is part of a program by BLM “to inflict economic injury on FRER, through a series of ongoing policies enacted and actions taken by BLM and carried out in the WDHA and across the country,” it offers absolutely no evidence to that effect. Wood Decl., ¶ 7. The decision is simply a single gather/removal decision affecting a limited number of wild horses in a discrete area of the public lands. FRER’s effort to show standing cannot transform the nature of the DR, and attribute to it either programmatic or policy ramifications that it does not have. See *National Taxpayers Union, Inc. v. United States*, 68 F.3d at 1433 (“Such a showing [of an ‘injury in fact’ necessary for standing to sue] requires ‘more than allegations of damage to an interest in ‘seeing’ the law obeyed or a social goal furthered.’” (quoting *American Legal Foundation v. Federal Communications Commission*, 808 F.2d 84, 92 (D.C. Cir. 1987))).

We, therefore, conclude that FRER has not shown that it is “adversely affected” by the Field Manager’s DR approving the gather and removal of wild horses from the WDHA and adjacent lands, and we grant BLM’s motion to dismiss for lack of standing to appeal. FRER’s appeal is dismissed.

¹⁷ See, e.g., *NAHB v. EPA*, 667 F.3d at 12; *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d at 1219; *Abigail Alliance*, 469 F.3d at 133; *Plotkin v. Ryan*, 239 F.3d 882, 886 (7th Cir. 2001); *Fair Employment Council of Greater Washington, Inc. v. BMC Marketing Corp.*, 28 F.3d 1268, 1277 (D.C. Cir. 1994); *Association for Retarded Citizens of Dallas v. Dallas County Mental Health & Mental Retardation Center Board of Trustees*, 19 F.3d 241, 244 (5th Cir. 1994); *Spann v. Colonial Village, Inc.*, 899 F.2d 24, 27 (D.C. Cir.) cert. denied, 498 U.S. 980 (1990); *Scenic America, Inc. v. U.S. Department of Transportation*, 983 F. Supp. 2d 170, 179 (D.D.C. 2013).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's motion to dismiss is granted, and FRER's appeal from the Field Manager's DR is dismissed.

_____/s/_____
James F. Roberts
Deputy Chief Administrative Judge

I concur:

_____/s/_____
Amy B. Sosin
Administrative Judge